IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE NINTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and
THE HON'BLE MR JUSTICE Ch.S.R.K. PRASAD

WRIT PETITION NO : 11373 of 2004

Between:

Thallapuneni Venkateswarlu, S/o Venkatapathi,
R/o 2-27, Kondayapalli, Chinna Chowk, Cuddapah

..... PETITIONER

AND

1 The Collector and District Magistrate, Cuddapah
2 The Principal Secretary, Home Dept. Government of A.P. Hyderabad
3 The Superintendent of Central Prison, Cherlapalli

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Habeas Corpus under Art.226 of the Constitution of India directing the respondents to produce Sri Thallapuneni Sankaraiah Naidu, S/o Chandraiah Naidu, now detained in Central Prison, Cherlapalli, before this Hon'ble Court and he may be release forthwith after declaring that his detention is illegal and void.

Counsel for the Petitioner: Mr.C.Padmanabha Reddy, Senior Counsel representing Mr.Suresh Kumar Reddy Kalava

Counsel for the Respondents: THE ADVOCATE GENERAL

The Court made the following :

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ORAL ORDER: (Per Sri Justice G.Bikshapathy)

1. This writ petition is filed assailing the order of detention passed by the 2nd respondent – Government in G.O.Rt.No.2670, dated 24.5.2004. The 1st respondent passed the order under Section 3(2) of the A.P. Prevention of Dangerous Activities of Boot Leggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (hereinafter referred to as "The Act") and ordered detention of the uncle of the petitioner (hereinafter called "the detenu") on the ground that he was a goonda as defined under Sec.2(g) of the Act. The said order having been approved by the 2nd respondent, the present writ petition has been filed.

2 . It is the case of the petitioner that after detention, the representation submitted by the detenue on 3.6.2004 was placed before the Advisory Board and the said Board rejected the representation and formal order of rejection was communicated to the detenu on 28.6.2004. Further, the matter was also placed before the Advisory Board in its meeting held on 28.6.2004 and the Advisory Board confirmed the order of detention and therefore, the Government issued the impugned order. The order of detention is assailed on the following grounds:

1. *that there is a total non-application of mind by the detaining authority in passing the order and the detenu did not fall within the definition "Goonda" as defined under Section 2(g) of the Act.*

2. *that the detaining authority has considered irrelevant grounds for passing the impugned order.*

It is also asserted that it is a long and unexplained gap between the alleged incident and the order of detention. Lastly, it was also urged that the acts alleged to have been committed by the detenu would not fall within the expression "acting in any manner prejudicial to the maintenance of public order" as defined under Section 2(a) of the Act and thus, the order of detention is liable to be set aside.

3. In the counter filed by the 1st respondent-authority, it is stated that the detenu has been causing grass loot of National Wealth and he was habituated to wilfully destructing the Pristine red sanders by operating mafia and there is a source of potential danger to the public and his activities are prejudicial to the maintenance of public order. It is submitted that the Divisional Forest Officer has placed the record before the detaining authority on 17.12.2003 wherein it was alleged that on 9.12.2003, a case was registered against the detenu while he was indulging in cutting of red sanders when the forest officials have found the red sander of 15 logs weighing 526 kgs., valued at Rs.11,072/- and thereby, he committed an offence under Section 379 IPC read with 20(i)c(ii)(iii) of A.P. Forest Act. Similarly, on 13.12.2003, a case was registered against the detenu while he was found carrying illicit cutting and storage of red sanders for transporting on 13.12.2003. The value of the red sander logs was Rs.14,432/- and thereby, a case was registered under Section 379 IPC and Section 20(i)(c)(ii)(iii) and (iv) of A.P. Forest Act. On 15.12.2003, another case was registered against the detenu under Section 379 IPC and Section 20(i)(c)(ii)(iii) of A.P. Forest Act.

4 . Basing on the above acts, the matter was considered by the detaining authority and an order was issued which culminated in the

order having been issued by the Government in G.O.Rt.No.2670, dated 24.5.2004. In pursuance of the orders of the detention, dated 19.5.2004, the detenu was arrested and detained in Central Prison, Cherlapalli from 21.5.2004. Thus, it is sought to be contended that the order of detention passed by the detaining authority as was approved by the Government in G.O.Rt.No.2670, dated 24.5.2004 is quite legal and valid and the same cannot be interfered with.

5. The learned senior counsel Mr.C.Padmanabha Reddy appearing for the detenu has submitted that the detenu did not fall within the definition "Goonda" as defined under Section 2(g) of the Act and therefore, on this ground alone he is to be released. He further submits that what is contemplated under Section 2(g) of the Act is that a person who is alleged to have indulged in habitual commission of offences is punishable under Chapter XVI or XVII or XXII IPC. In the instant case, the learned counsel would submit that even though Section 379 IPC is covered by Chapter XVII I.P.C. yet the detaining authority has referred to the provisions under Section 20 of Forest Act as referred to above and therefore, the detaining authority has taken into consideration the irrelevant material for passing the impugned order. Thus, he submits that there is total non-application of mind and the subjective satisfaction as arrived by the detaining authority is not based on the objective consideration of the material placed on record.

6. For considering this contention, it is necessary to refer to the definition "Goonda" under section 2(g) of the Act which reads thus:

> *"A person, who either by himself or as a member of or leader of a gang, habitually commits, or attempts to commit or abets commission of offences punishable under Chapter XVI or Chapter XVII or Chapter XXII of the Indian Penal Code."*

In the order of detention passed by the detaining authority on 19.5.2004, the following three grounds were made:

1. *O.R.No.50/2003-04, dated 9.12.2003: On 9.12.2003 at about 4.00 P.M. while Sri E.Srrenivasulu, Forest Section Officer and other forest staff patrolling the Bungalow Bodu locality*

in the Vathalur Reserve Forest of Vathalur beat noticed you and your accomplice hiding in the bushes, the Forest Officials tried to catch-hold of you, but you ran away from the scene of offence on noticing the officials. On inspection of the area near bushes found Red Sander logs 15 in number weighing 526 Kgs. Valued at Rs.11,572.00. Thus, you and your accomplice entered into Reserve Forest illegally, carried illicit cutting and storage of Red Sanders for transporting. Hence, you were charged under Section 379 IPC (theft of Government property) and Section 20 (i) C II, III and X of A.P. Forest Act, 1967. Thus, it is quite evident that you are committing offences of illicit cutting and storing of Red Sanders causing wilful destruction of valuable Red Sanders which is endangered species and national wealth.

2. *O.R.No.51/2003-04, dated 13.12.2003: On 13.12.2003 at about 3.00 P.M. while Sei E.Srrenivasulu, Forest Section Officer and other forest Staff patrolling the Seshachalam Extension Reserve Forest Rollamadugu beat upper side of Pallapet, you along with your accomplice found near the bushes. ON noticing the forest officials, you and your accomplice ran away from the scene of offence. On inspection of the area near bushes found Red Sander logs 20 in number weighing 656 Kgs valued at Rs.14,432.00 thus you and your accomplice entered into Reserve Forest, carried illicit cutting and storage of Red Sanders for transporting. You were charged under Section 379 IPC and Section 20 (i) C II, III and X of A.P. Forest Act, 1967. Thus, it is quite evident that you are committing offences of illicit cutting and storing of Red Sanders causing wilful destruction of valuable Red Sanders which is endangered species and national wealth.*

3. *O.R.No.52/2003-04, dated 15.12.2003: On 15.12.2003 at about 4.00 P.M. while on receipt of reliable information, Sri T.Mallikarjuna, Forest Range Officer and other forest staff went to west side of N.T.Kunta locality in S.R.Palem beat of Seshachalam Reserve Forest. On noticing the forest officials, you along with your 3 accomplice ran away from the scene of offence. ON inspection of the area near*

bushes found Red Sander logs 42 in number weighing 1330 Kgs. Valued at Rs.29,260/-. Thus, you and your accomplice entered into Reserve Forest illegally, carried illicit cutting and storage of Red Sanders for transporting. You were charged under Section 379 IPC (theft of Government property) and Section 20 (i) C II, III and X of A.P. Forest Act, 1967. Thus it is quite evident that you are committing offences of illicit cutting and storing of Red Sanders causing wilful destruction of valuable Red Sanders which is endangered species and national wealth.

7. As can be seen from the above grounds, the first ground relates to the charge alleged to be under Section 379 IPC (theft of Government property) and Section 20 (i) C II, III and X of A.P. Forest Act, 1967. Similar charges were made under ground Nos.2 and 3 also.

8 . The question that calls for consideration is when the person habitually commits or attempts to commit such offence punishable under Chapters XVI, XVII and XXII, is it open for the detaining authority to pass the impugned order.

9. In the instant case, admittedly, the detaining authority has not only considered Section 379 IPC but also taken into consideration Section 20 of Forest Act, which is not covered by the provisions of the Act. Therefore, in such a situation, the entire order as passed by the authority has to be stuck down.

10. He relies on the decision of the Supreme Court in **MUSTAKMIYA JABBARMIYA SHAIKH Vs.M.M.MEHTA.** While dealing with the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 has interpreted the words ‘habit’ or ‘habitual’ has not been defined under the Act and further observed that in order to bring a person within the four corners of “dangerous person” there should be positive material to indicate that such person is habitually committing or attempting to commit or abetting the commission of offences which are punishable under Chapter XVI or Chapter XVII IPC or Chapter V of Arms Act and that a single or isolated act falling under Chapters

cannot be characterized as an habitual act referred to in Section 2(c) of the Act. Further, explaining the expression “acting in any manner prejudicial to the maintenance of public order”, the Supreme Court observed that in order to bring the activities of the person within the expression “acting in any manner prejudicial to the maintenance of public order”, the fall out and the extent and reach of the alleged activities must be of such a nature that they travel beyond the capacity of the ordinary law to deal with him or to prevent his subversive activities affecting the community at large or a large section of the society. It is the degree of disturbance and its impact upon the even tempo of life of the society or the people of a locality which determines whether the disturbance caused by such activity amounts only to a breach of “law and order” or it amounts to breach of “public order”. If the activity falls within the category of disturbance of “public order”, then it becomes essential to treat such a criminal and deal with him differently than an ordinary criminal under the law as his activities would fall beyond the frontiers of law and order, disturbing the even tempo of life of the community of the specified locality.

11. The Supreme Court, in the above case, referred to the decisions reported in 1970(1) SCC 98: 1970 SCC (Cri) 67 in Arun Ghosh Vs. State of West Bengal; and 1989 Supp (1) SCC 322 in Piyush Kantilal Mehta Vs. Commissioner of Police.

12. However, the learned Advocate General relies on the judgement of the Division Bench of this Court reported in **ANAKALA MADDILETI Vs. GOVT. OF A.P.** In that case, the detention order was passed by the detaining authority on 19.2.1999 under section 3(2) read with Section 3(1) of the Act. It was alleged in the detention order that the detenu, along with 8 to 10 smugglers, attempted to assault forest personnel and assaulted one Malla Reddy, with sticks. Therefore, a crime was registered under Section 353, 324 and 379 IPC and again on 16.10.1996 when one V.Balachari and his staff were patrolling, the detenu, along with 17 followers, forcibly drove a 14 carts loaded with teak timbers by threatening forest staff and the

police registered a case in Cr.No.106/96 under Sections 353, 332 and 379 IPC. Further, on 30.10.1996, the detenu along with others obstructed the forest staff on duty and forcibly managed to escape. Therefore, another crime was registered under Sections 144, 353, 506 and 379 IPC. On 14.2.1999, again, the detenu, along with 20 others attempted to murder the party staff including Ahmad Ali Khan, Forest Range Officer. Therefore, a crime was registered under Section 332, 307 and 506 IPC. In that regard, when a detention order was passed and it came to be challenged by the detenu, the Division Bench had to consider whether it falls within the definition “Goonda”. The Division Bench answered in the affirmative.

13. But, it is to be noted that in the aforesaid case, the only provision of the offences under the Indian Penal Code was referred to and no provision relating to other enactment which is not covered by the definition “Goonda” act was mentioned. In the instant case, we are faced with a different situation where not only Section 379 IPC was referred to in the alleged ground but also Section 20 of the Forest Act was mentioned. Therefore, on facts, the decision of the Division Bench is not applicable to the facts of the present case.

14. It is not in dispute that the detaining authority has to apply the principle of objective consideration before reaching subjective satisfaction but when the provision itself cannot be taken into consideration for passing the detention order, can it be said that the detention order can still be maintained?

15. The learned Advocate General however tried to convince this Court that Section 379 IPC is referable to Chapter XVII and that itself constitutes a sufficient ground to enable the detaining authority to pass the order. In our considered opinion, the contention cannot be accepted. When the detaining authority has taken into consideration both relevant and irrelevant grounds, the entire order of detention has to be set aside and it cannot salvage the order to the extent of Section 379 IPC. We are not inclined to go into the aspect whether Section 379 IPC has been properly invoked so as to bring it within the

parameters of 2(a) of the Act. Suffice it to say that it is not open for the detaining authority to consider the provisions, which are not relevant and which are not stipulated under the Act so as to invoke the detention order.

16. Under those circumstances, without going to the other contentions raised by the learned counsel for the detenu, we are satisfied that the order of detention is not sustainable and accordingly, the impugned order is set aside.

17. In the result, the Writ Petition is allowed and the impugned order bearing Ref.No.C1/335/M/04, dated 19.5.2004 passed by the 1st respondent-Collector and District Magistrate, Cuddapah is set aside, and the detenu viz., Thallapuneni Sankaraiah Naiu, son of Chandraiah Naidu shall be released forthwith, if he is not required in any other case.

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(G.BIKSHAPATHY,J.)

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(Ch.S.R.K.PRASAD,J.)

9th August, 2004

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To

1 The Collector and District Magistrate, Cuddapah
2 The Principal Secretary, Home Dept. Government of A.P. Hyderabad
3 The Superintendent of Central Prison, Cherlapalli, R.R. District.

4 Two C.Cs. to the Advocate General, High Court Buildings, Hyderabad (OUT)

5 Two C.D. copies